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Sonicraft, Inc. and Warehouse, Mail Order, Office Technical and Professional Employees Union, Local 743, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO. Case 13-CA-22020

January 31, 1996

THIRD SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

On June 15, 1989, the National Labor Relations Board issued a Decision and Order,¹ *inter alia*, ordering the Respondent, Sonicraft, Inc., to make whole certain of its employees for loss of earnings and other benefits resulting from its discrimination against them in violation of the National Labor Relations Act. On June 12, 1990, the United States Court of Appeals for the Seventh Circuit entered a judgment enforcing the Board's Order.²

A controversy having arisen over the amount of backpay due the discriminatees under the Board's Order as enforced, on January 16 and June 27, 1991, and February 12, 1992, respectively, the Regional Director for Region 13 issued a compliance specification, an amended compliance specification, and an amendment to the amended compliance specification.

Thereafter, on July 31, 1992, the Respondent and the General Counsel entered into a formal settlement stipulation. On September 30, 1992, the Board issued a Supplemental Order approving the settlement stipulation and ordering the Respondent to make whole the named discriminatees by paying the total sum of \$1,200,000 plus interest calculated at 6.5 per annum, calculated monthly on the outstanding balance owed, said amounts of backpay and interest to be paid over a period of 8 years beginning on January 15, 1993, and continuing on a monthly basis (with payment due to the Regional Office by the 15th of each month) until the total sum is paid, but no later than December 15, 2000. Pursuant to the terms of the settlement, the Board's Order further provided that:

In the event Respondent fails to make timely payment of any amounts set forth above, the Regional Director for Region 13 of the National Labor Relations Board may serve a notice of default upon Respondent. Respondent shall have 15 days from receipt of said notice to cure the de-

fault and, if the amounts due and owing are not remitted to the Regional Office by such time, the entire remaining balance on the total amounts set forth, including the entire amount of interest due and owing over the entire payment period, shall become immediately due and payable. The parties further agree that without any further notice to Respondent or any other proceedings of any kind, on motion of the General Counsel, the Board may issue an Order for the total amount of backpay and interest then outstanding and due and a United States Court of Appeals may enter a judgment for said amount *ex parte*. Respondent Sonicraft waives all defenses to the entry of said judgment. On October 22, 1992, the United States Court of Appeals for the Seventh Circuit entered a consent judgment enforcing the Board's Supplemental Order.³

Thereafter, on December 14, 1995, the General Counsel filed with the Board a Motion to Transfer Case to the Board and for Summary Judgment. The General Counsel submits that the Respondent has failed to comply with the terms of the settlement by failing to remit monthly payments due, that the Respondent is in default, that the Regional Director repeatedly served notices of default on the Respondent in compliance with the settlement, but the Respondent nevertheless failed to cure its default, and that under the terms of the settlement the entire remaining balance and interest due and owing over the payment period is immediately due and payable and the Board may issue an order for the total amount of outstanding backpay and interest due on motion by the General Counsel. The General Counsel therefore requests that the Motion for Summary Judgment be granted and that the Board order the Respondent's immediate payment of the total amount of backpay and interest currently outstanding and due (\$1,057,462.90), plus interest.

On December 15, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

³ A controversy having subsequently arisen over the Respondent's failure to reinstate the named discriminatees, on January 15, 1993, the Regional Director issued a second compliance specification. Thereafter, on March 8, 1994, the Respondent and the General Counsel entered into a second formal settlement stipulation. On October 19, 1995, the Board issued a Second Supplemental Order approving the second settlement stipulation and ordering the Respondent to take the action set forth therein. The General Counsel's instant motion, however, does not assert that the Respondent has violated the terms of the second settlement stipulation and Second Supplemental Order, and does not request any relief with respect thereto. Rather, the motion only asserts that the Respondent has failed to comply with the backpay provisions of the original settlement and Supplemental Order.

¹ 295 NLRB 766 (1989).

² 905 F.2d 146 (7th Cir. 1990).

Ruling on the Motion for Summary Judgment

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent has failed to comply with the terms of the settlement stipulation by failing to remit monthly payments due, and is in default. Furthermore, the Regional Director has served repeated notices of default on the Respondent in compliance with the settlement stipulation, and the Respondent has nevertheless failed to cure its default. Under the terms of the settlement stipulation and Supplemental Order, therefore, the entire remaining balance and interest due and owing over the payment period is immediately due and payable and the Board may issue an order for the total amount of outstanding backpay and interest due on motion by the General Counsel. Accordingly, we grant the General Counsel's Motion for Summary Judgment and will order payment by the Respondent of the total amount of backpay and interest currently outstanding and due as set forth in the General Counsel's motion, plus interest accruing on said amount to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Soncraft, Inc., Chicago, Illinois, its offi-

cers, agents, successors, and assigns, shall make whole the discriminatees by immediately paying the following amount that is the total amount of backpay and interest currently outstanding and due under the terms of the Board's September 30, 1992 Supplemental Order, as enforced, plus interest to be computed in the manner set forth in the Supplemental Order, minus tax withholdings required by Federal and state laws: \$1,057,462.90.

Dated, Washington, D.C. January 31, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD